House of Commons
Energy and Climate Change Committee

Pre-legislative scrutiny of the Government’s draft legislation on energy: Government Response to the Committee’s Sixth Report of Session 2015–16

Fourth Special Report of Session 2016–17
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The Energy and Climate Change Committee

The Energy and Climate Change Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department of Energy and Climate Change and associated public bodies.

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Committee staff

The current staff of the Committee are Dr Farrah Bhatti (Clerk), Gavin O’Leary (Second Clerk), Dr Marion Ferrat (Committee Specialist), Stephen Habberley (Committee Specialist), Joshua Rhodes (Committee Specialist), Jamie Mordue (Senior Committee Assistant), Henry Ayi-Hyde (Committee Support Assistant), and Nick Davies (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Energy and Climate Change Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2158; the Committee’s email address is ecc@parliament.uk.
Special Report

On 4 May 2016, the Energy and Climate Change Committee published its Sixth Report of Session 2015–16, Pre-legislative scrutiny of the Government’s draft legislation on energy (HC 776). On 12 July 2016, the Committee received the Government response to the Report. It is appended below.

Appendix: Government response

Introduction

1. The Energy and Climate Change Committee conducted an inquiry into pre-legislative scrutiny of the Government’s draft legislation. Following the submission of written evidence and two oral evidence sessions, the Committee published its report on 4 May 2016.

2. The Government is grateful for the Committee’s scrutiny of the draft legislation on energy and their report. The Government welcomes the Committee’s recognition that the draft legislation could help drive innovation in the energy sector and potentially lower people’s energy bills.

3. Although an essential component of action the Government is planning to take forward in this area, these measures are not an exhaustive list of all the activity that is taking place. The Government will continue to take action where the market is not delivering a fair deal for bill payers. We want to see more competition in the energy market, which gives people more choice and keeps tariffs as low as possible. The recommendations in the Competition and Markets Authority’s Energy Market Investigation Final Report (published on 24 June) are another step towards ensuring we have a competitive and effective energy market for consumers. The Government will now take action, along with Ofgem, to implement these recommendations.

4. As the Committee notes, once enacted, the legislation has the potential to support Ministers in their aim of increasing competition in the market and reducing costs for consumers.

Government response to the Committee’s conclusions and recommendations

Smart Meters: Extending the Secretary Of State’s powers

Recommendation 1: The extension beyond 2020 of the Secretary of State’s powers on smart metering has raised legitimate questions about whether the smart meter roll-out programme is on track to meet its 2020 target. We accept, however, that extending them until 2023 will enable the Secretary of State to address the outcomes of the programme in order to ensure its maximum benefits. We therefore support the extension of these powers, with the caveat that the Government must state whether the 2020 target is realistic and ensure that all those involved in the roll-out programme
are committed to, and capable, of meeting it. We recommend that parliamentarians press the Government, during the passage of the Bill through Parliament, on what progress is being made towards achieving the 2020 roll-out target.

5. The Government welcomes the Committee’s support for the smart metering measure, both the extension to the Secretary of State’s powers to modify the smart metering regulatory framework and the introduction of a Special Administration Regime for the smart meter communications company (the ‘Data Communications Company’).

6. The Government is committed to every home and small business being offered smart meters by the end of 2020. The Programme is making good progress and over 3 million meters have been installed in homes and business across Great Britain in the foundation stage of the Programme. Energy suppliers have had long term visibility of the need to take all reasonable steps to install smart meters in their domestic and smaller non-domestic customers’ premises by the end of 2020. The Government assess most large energy suppliers as being adequately or well prepared to start using the Data Communications Company services and to begin the main installation phase later this year.

7. The Department, in collaboration with industry and consumer organisations, monitors, drives and coordinates progress to completion of the roll-out. The Government publishes quarterly updates on the number of smart meters and advanced meters installed and operated in Great Britain, with our last update published on 31 March.¹

Switching and settlement: Introducing powers to modify codes and licences

Recommendation 2: Enabling consumers to switch suppliers as quickly as possible, and helping suppliers to obtain a more accurate understanding of their customers’ energy consumption, thereby allowing market participants to offer more competitive tariffs, are two significant undertakings. A more formal role for Ofgem to modify industry codes and licences in this area will help to ensure that the needs of consumers are put first. We therefore consider the proposals to give Ofgem the power to initiate modifications to industry codes to be necessary and proportionate. For too long the priorities of some in the industry have not aligned with those of consumers.

8. The Government welcomes the Committee’s support for the proposed powers. As stated in DECC’s written evidence to the Committee, our view is that introducing new powers for Ofgem to modify multiple industry codes to deliver switching and settlement policy objectives is a proportionate and more efficient alternative to it using its existing Significant Code Review powers.

Recommendation 3: Ofgem has provided assurances that it will work with stakeholders ‘up front’ to develop industry code modifications. Given the draft measures, which ensure that Ofgem must also consult stakeholders after it has published its proposed changes, we understand why Ofgem suggests that any provision for an appeal against such changes on merit would be unnecessary. However, industry remains concerned that the draft provisions include the right only to a judicial review of the process, rather than to an appeal to the Competition and Markets Authority against the change itself. We recommend that the legislation be amended to include a statutory right of appeal. However, should this prove undesirable, we consider that the argument for Ofgem’s

¹ DECC, Statistical release and data: Smart Meters, Great Britain, quarter 4 2015, March 2016
preferred approach would be bolstered if it was specifically required to produce an impact assessment when it publishes a notice of a proposed code modification in relation to the switching and settlement reform programmes.

9. The Government agrees that appropriate safeguards must be in place to ensure that Ofgem acts proportionately when exercising powers enabling it to modify industry codes. The Government has carefully considered the Committee’s recommendation to include a statutory right of appeal, but in light of the collaborative process that Ofgem will take to develop the modifications required, the Government shares Ofgem’s view that the most appropriate route is to have judicial review as opposed to an appeal to the Competition and Markets Authority. In particular, an appeal to the Competition and Markets Authority could cause delay in implementing the reliable next day switching and/or half-hourly settlement programmes whilst the appeal process is followed. This could undermine a key aim of the powers to enable delivery of these programmes in an efficient and proportionate way.

10. However, the Government agrees with the alternative approach the Committee has suggested and amendments will be made to the legislation to require Ofgem to produce an impact assessment alongside proposed code modifications. This will ensure that stakeholders have the opportunity to scrutinise Ofgem’s decision-making process in respect of code modifications, as they will do through the consultation processes for the reliable next day switching and half-hourly settlement implementation programmes.

Recommendation 4: Mandatory half-hourly settlement may involve significant initial costs to industry and, by extension, to customers. It may also impact on individuals who are unable to switch their energy consumption to any effective degree. We are grateful to the Minister for clarifying that his expectation is that Ofgem would conduct an impact assessment of mandatory half-hourly settlement. In order to leave no room for uncertainty we recommend that the legislation include the provision that Ofgem must conduct an impact assessment of mandatory half-hourly settlement.

11. As set out above in response to recommendation three, the Government intends to amend the draft legislation prior to Introduction to require Ofgem to conduct an impact assessment before proposing code modifications for the purpose of introducing mandatory half-hourly settlement. The Competition and Market Authority has also recommended Ofgem conduct a full cost-benefit analysis of the move to mandatory half-hourly settlement.

Recommendation 5: Settling against customers’ actual half-hourly electricity consumption represents a big step forward from the current practice of settling on a non-half-hourly basis against average consumption profiles. But technological innovation will allow an increasing number of people to see how much energy they have consumed during periods shorter than 30 minutes. In turn, this will allow them to identify with even more precision when they can get the best value for money from their energy use. Such innovation is pushing the boundaries of existing regulation here and abroad, so the Government must ensure that the draft legislation and the detailed licences, codes and regulations that flow from it are, as far as possible, future-proofed, particularly in relation to moving beyond half-hourly settlement, should consumers and suppliers choose to.
12. The Government agrees with the Committee that moving to half-hourly electricity settlement is a significant development compared to the current approach for settling domestic and smaller non-domestic consumers. As the Government’s written evidence to the Committee noted, half-hourly settlement—using the functionality provided by smart meters—can help support the move towards a smarter, more flexible energy system that delivers lower bills, lower carbon emissions and enhanced security of supply.²

13. The Government recognises that technology already exists which allows consumers to see how much energy they are consuming at a more granular level than half-hourly. For example, Great Britain smart metering equipment is required to include the functionality that allows electricity consumption updates to be sent from the electricity meter to the In-Home Display at least every ten seconds.

14. The powers being sought are specific and time-limited for the purposes of delivering half-hourly settlement in an efficient way, to reflect the current approach to electricity system balancing which is done on a half-hourly basis. Ofgem have set out their intention to issue a decision on mandatory half-hourly settlement, including timescales, by the first half of 2018.³

**Competitive tendering for onshore transmission: Cost-benefit analysis**

Recommendation 6: Competitive tendering for onshore transmission is in principle a positive step that should bring benefits to consumers and communities. But the process of determining whether and how to tender for onshore transmission has still to be finalised. In particular, we have heard concerns that Scottish transmission operators would be differentially exposed to competition compared with their English and Welsh counterparts. Before introducing the Bill in Parliament the UK Government should consult further with Scottish stakeholders to ensure that there is a level playing field for transmission projects across Great Britain.

15. The Government welcomes the Committee’s support for the proposals to introduce competitive tendering for onshore electricity infrastructure, which will help drive down costs for consumers. The Government agrees that there should be a level playing field for all projects as soon as practicable, so that the benefits of competition can be maximised. The varying thresholds for different operational transmission networks have been proposed as an interim measure until the start of the RIIO-T2⁴ price control in 2021, and are designed to enable consumers to see the benefits from competitive tendering as quickly as possible. By the time of the start of the RIIO-T2 price control period, there will be a single threshold for all projects across Great Britain.

16. Ofgem has been clear since 2011 that projects deemed ‘strategic wider works’ under the RIIO-T1 framework could be subject to competitive tender.⁵ Whether a project is considered a ‘strategic wider work,’ depends on its capital value and which transmission owner is responsible for it. The specific thresholds, which vary between different transmission owners, were requested by the transmission owners in their business plans in advance of the start of the RIIO-T1 price control. Transmission owners were aware at

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² DECC (DEB0009)
⁴ RIIO is Ofgem's framework for setting price controls for network companies (Revenue = Incentives + Innovation + Outputs).
⁵ Ofgem, *Consultation: RIIO-T1 Implementing competition in onshore electricity transmission*, December 2011
the time of the thresholds being set that any ‘strategic wider works’ could be subject to
competitive tendering, were the policy to be introduced during the price control period.
Government, working with Ofgem, will continue to engage with Scottish stakeholders in
the ongoing development of the competitive regime to understand their views.

Recommendation 7: Ofgem has consulted on a potential regime but it is clear from
the responses to that work and from evidence we have received that stakeholders have
ongoing concerns and further clarity is needed. Our main concern is to ensure that
value for money is at the heart of any decision to take a project through the competitive
tendering process. To that end, we recommend that Ofgem clarify, before the draft Bill
receives its Second Reading, what exactly it will be doing to mitigate against the risk of
delaying projects that are subject to tendering.

17. The Government does not intend that the introduction of competitive tendering will
lead to delays in project delivery. Under Ofgem’s proposals, tender processes will run in
parallel to the other processes integral to delivering a project. Competitively appointed
transmission owners will also be incentivised to have assets up and running as quickly as
possible. Until the project is energised, the competitively appointed transmission owner
will not see a return on their investment, which is not the case under the current regime.
Innovative construction and project planning practices could also lead to a reduction in
delivery timescales which would shorten the overall project timeline.

18. For projects that have been developed by transmission owners in the RIIO-T1 period,
up until 2021, Ofgem will consider the potential for material delay to the timing of project
delivery when making a decision to run a tender.

19. Ofgem will continue to consult broadly on the introduction of competition in advance
of the introduction of any secondary legislation, and intends to lay out in more detail
how projects will be tendered and energised in a timely way.\textsuperscript{6} We are grateful that Ofgem
and the Energy Networks Association are facilitating a number of working groups with
industry representation to discuss in detail how regulatory arrangements for competition
can be designed to be effective and mitigate the risk of delay.

Recommendation 8: We also welcome the use of two different competitive tendering
models for onshore transmission, which should provide different benefits for different
projects. To ensure that efforts are concentrated on projects with the biggest potential
benefits, we recommend that the legislation be amended to direct Ofgem to introduce
project-specific impact assessments.

20. The Government welcomes the Committee’s support for both the early and the late
tendering models, and agrees that each model has the potential to bring different kinds of
benefits for consumers.

21. The Government does not intend to amend the draft legislation to require Ofgem to
produce project-specific impact assessments. Securing value for consumers requires us
to ensure that there are a wide number of parties able to bid for competitively awarded
licences, which in part is achieved through securing a transparent pipeline of upcoming
projects. Project-specific impact assessments would create uncertainty about the potential

\textsuperscript{6} A further consultation was launched on 27 May and ran until 22 July 2016, and more details are available at: Ofgem,
\textit{Extending competition in electricity transmission: criteria, pre-tender and conflict mitigation arrangements}, May
2016
pipeline. They would also increase the total length of time it would take to conclude the project assessment and tender processes. The System Operator is required to produce an annual report, the 'Network Options Assessment', which details upcoming enhancements to the transmission system and their suitability for tender, which fulfils some of the functions of a project-specific impact assessment.

**Recommendation 9:** We were given a clear example of how the draft legislation does not take account of the planning regime in Scotland, which could lead in that part of Great Britain to project delays that do not occur elsewhere. We note the Minister's evidence to us that officials in the Scottish and UK Governments are discussing the matter, and that he thinks it can be “fairly readily overcome”. We recommend that the Government set out in this or other relevant legislation how the potential delays to late model projects due to Scotland's planning regime will be overcome.

22. The UK Government and Ofgem have been working closely with the Scottish Government to consider the impact of any differences between the respective planning regimes. Both Governments are publicly committed to ensuring that competition can be rolled out effectively across the whole of Great Britain.

23. We are considering in detail the transferability of certain rights and consents and exploring a number of possible ways of ensuring that the high standards of the planning regime can be adhered to across Great Britain, whilst ensuring competition can be rolled out effectively.

24. The UK Government welcomes the continued support from the Scottish Government and is happy to consider whether any further legislative changes are required to ensure the regime operates smoothly and unnecessary delays are avoided.

**Recommendation 10:** We welcome the government’s reassurance that competitive tendering for distribution assets will not take place until the end of the current RIIO-ED1 price control period in 2023; and that an impact assessment will be published before it is decided to give effect to the provision in further legislation. This should be reiterated as a clear undertaking by the minister during the second reading debate on the draft bill.

25. The Government included distribution assets within scope of the draft legislation in order to ‘future-proof’ the legislation. There are no current plans to extend competition to distribution assets (there is already competition in connections at the distribution level), but there may be a case for extending competition in the future. The Government confirms it will not commence the provisions within the current RIIO-ED1 price control provision, which runs until 2023. The Government would carry out an assessment of the costs and benefits of extending competition to distribution assets at the time of commencing the provisions.

**Recommendation 11:** The draft legislation includes a proposal to enable generators to build, test and operate, temporarily without a licence, onshore transmission assets. We welcome the Government’s willingness to think very carefully about the points that have been made to us during our inquiry. There are concerns about the impact of such work on the wider transmission and distribution networks, and on other generators that wish to connect to them; and that provision should be made to deal with these issues while the generator is operating without a licence. We recommend that the
Government undertake to consult further with the industry on, and to carry out a dedicated impact assessment of, this specific proposal before it is commenced through legislation.

26. Onshore generators would only be able to build and test an asset which would then be regulated by a competitively awarded licence. The Government believes that this could help reduce costs by allowing, for example, a generator to raise finance or secure planning consent for a generation and transmission project at the same time, or enable quicker completion of a project by controlling both transmission and generation construction programmes.

27. The Government, with Ofgem, will continue to discuss these questions with stakeholders and consider any views. Before commencing legislative provision for a ‘generator-build’ tender model through secondary legislation, the Government would assess the costs and benefits of doing so through the associated impact assessment.

Recommendation 12: We ask the Government to explain why under the draft legislation an existing licence holder, whose licence Ofgem seeks to modify as a result of the holder being awarded a competitive onshore transmission or distribution licence, has no right of appeal to the Competition and Markets Authority against the proposed modification.

28. The Government believes that the licence modification procedure proposed in the draft legislation is suitable for a number of reasons. First, it is similar to the one used for the granting of an offshore licence following a competitive process,7 which reduces the regulatory burden on businesses. Second, the Government believes that it is not proportionate for a licence modification of this kind to be appealable to the Competition and Markets Authority, because the modifications in question would simply give effect to the licence holder’s identification as the successful bidder in a tender exercise. Any affected parties would have the right to appeal against the outcome of the tender exercise before any modification is made, as is the case when licences are granted on a non-competitive basis. They will also retain the right to judicial review of the decision to modify the licence.

Recommendation 13: We ask the Government to clarify whether, in the event of a licence holder being directed to act as a transmission owner of last resort, it would modify the licence to reflect any difference in costs required to deliver the project.

29. The Government believes that the draft legislation does not require the transmission owner of last resort to deliver a project at bid cost. As such, the Government confirms that it would not modify the licence of any transmission owner of last resort to require them to act as a successful bidder with regards costs.

30. The proposed legislation (Paragraph 36A(4)) treats the transmission owner of last resort as the successful bidder in a tender exercise for the sole purpose of ensuring that the (Schedule 2A) property transfer powers apply to property required by the transmission owner of last resort in order to discharge its functions. The draft legislation does not require the transmission owner of last resort to be treated as the successful bidder for any other purpose. Consequently, the transmission owner of last resort would not be required to act as a successful bidder with regards the costs that the successful bidder had proposed.

7 Electricity Act 1989, section 8A
and there would be no need to amend a licence to reflect that. Ofgem would determine the economic and efficient revenue to be received by the transmission owner of last resort. These arrangements mirror existing ones for transmission owner of last resort.

Recommendation 14: Given the concerns we have highlighted earlier, about the potential for the legislation to create an uneven playing field for transmission operators and consumers in Scotland and those in England and Wales, we recommend that the regulations setting out the criteria for those onshore transmission assets that may be competitively tendered, which the Secretary of State introduces under her powers in the schedule, be subject to the affirmative resolution procedure to ensure adequate scrutiny.

31. As noted in our response to recommendation nine, the Government is working with the Scottish Government, Ofgem and wider stakeholders to consider any issues that impact on the effective roll-out of competition across Great Britain as a whole. The varying thresholds for projects that could be subject to tender is purely an interim measure based on thresholds put forward by the transmission companies themselves. The Government is committed to discussing these issues and to resolving any legitimate issues with the primary legislation in advance of introduction. Given this, the level of detail and safeguards already included in the draft legislation and the technical nature of the secondary legislation, the Government believes that a negative resolution procedure, as has been the case with the existing offshore regime, remains appropriate and proportionate.

Further technical considerations

Recommendation 15: We recommend the Government clarify why in the draft legislation a smart meter communications licensee administrator should have to operate under closer ministerial direction than an administrator exercising their responsibilities in relation to other energy licensees under the Energy Act 2004.

32. The Committee asked for clarification of the intent of clause 3(6) which gives the Secretary of State the power to provide guidance to an administrator on how to prioritise the activities carried out by the Data Communications Company in the event of insolvency. The Data Communications Company is expected to provide a range of services under its licence, some of which are mandatory and others which are elective. The scope of these services may change in the future and therefore some flexibility is needed in the regime, so it is not appropriate to define the prioritisation in primary legislation. This clause provides the necessary flexibility. Beyond this, the administrator would not work under any closer ministerial direction than in any other regime under the Energy Act 2004.

Recommendation 16: Given the potential impact on consumer bills, we recommend that Parliamentarians pursue with Ministers the provision enabling the Secretary of State to require a licensee to raise money to finance a smart meter communication licensee subject to a special administration regime. We recommend also that the Government explain why the draft legislation gives the Secretary of State the power to modify licences where she considers it “appropriate”, rather than, as under the Electricity Act 1989, where she considers it “necessary or expedient”.

33. The Committee noted that in clause 6 the legal test for modification of licence conditions to implement the Special Administration Regime is less strict than for
other powers in the Electricity Act 1989 which allow the Secretary of State to modify licence conditions. The power provided in this clause is identical to that in other Special Administration Regimes for the energy industry, specifically the Special Administration Regimes for energy suppliers (implemented in the Energy Act 2011) and for energy networks (implemented in the Energy Act 2004). The powers in the Electricity Act 1989 were intended for implementing electricity trading reforms rather than Special Administration Regimes and therefore the legal test is different. We therefore consider it appropriate to follow the precedent set by previous Special Administration Regimes.

**Recommendation 17:** We recommend that the Government clarify why clauses 11 to 13 give Ofgem the power to modify a ‘document’ rather than a ‘code’ maintained in accordance with an energy licence; and explain why the draft legislation goes further than, for example, the Electricity Act 1989 and empowers Ofgem to ‘remove or replace all of the provisions’ of a document or agreement.

34. The Government considers that, given the nature of the various codes, agreements and other industry documentation, e.g. Master Registration Agreement, Supply Point Administration Agreement, which Ofgem may need to modify in the exercise of these powers, it would be more appropriate to refer to a ‘document’ maintained in accordance with an electricity or gas licence more generally, rather than use the term ‘code’.

35. The provision enabling Ofgem to remove or replace all of the provisions of a document or agreement is merely a ‘housekeeping’ measure enabling Ofgem to make a decision on the most appropriate format for the documents or agreements that it has modified.

36. Modifications for the purposes of switching and half-hourly settlement could be quite involved. For example, if as part of this process, Ofgem modified document A by moving most of the contents into document B, it might decide that rather than keep the remaining provisions in document A, it would make sense to move those remaining provisions into document C. Without this power, there is argument that Ofgem would be unable to terminate the existence of document A, meaning a shell of that document A would need to remain, even if it did not contain any operative provisions.

37. This provision is purely to make sure that Ofgem can ensure that the structure of the modified documents and agreements make sense.

**Recommendation 18:** We recommend that the Government explain why it is seeking to broaden the range of bodies from which it seeks to recover costs after an onshore transmission or distribution tender exercise to include those who made a connection request in relation to a previous tender exercise, and existing transmission and distribution licence holders.

38. The range of bodies from which costs may be recovered after an onshore transmission or distribution tender exercise has been broadened to ensure that Ofgem’s costs can be recovered in all possible tender scenarios. This guarantees that costs are recovered from the most appropriate party and that Ofgem will not face a funding shortfall.

39. The draft legislation enables costs to be recovered from a person making a connection request in relation to a previous tender exercise. This provides for re-tenders in relation to an asset which has already been the subject of a tender exercise. This is most likely in the instance that an asset is the subject of a tender exercise for a second time, perhaps because
the previously-awarded revenue period has run its full length but the asset can continue to function and is still required by the party that made the original connection request. In that scenario, the connection request will have been made in relation to the original, as opposed to the second, tender exercise, and costs need to be recoverable from the party who made the original request.

40. The draft legislation enables costs to be recovered from existing licence holders to cover the scenarios in which a generator has not made a connection request (for example where the connection serves a wider system need) and it is not appropriate to recover money from bidders (perhaps because no bidders come forward, or there are bidders but the tender is abandoned, other than due to bidder action or omission, for example, where the need for a project falls away during a tender). In these instances, Ofgem’s costs cannot be recovered from a winning bidder or a person who has made a connection request, so Government believes that Ofgem should have the discretion to recover costs from all licence holders.

Recommendation 18: We ask the Government to clarify whether cost assessment costs are included in the tender costs that Ofgem must account for when, as the draft legislation makes provision for, it must ensure that the total it has received in tender costs does not exceed the actual costs. If they are not included, we ask the Government to explain their omission from the calculation that Ofgem must make.

41. The draft legislation makes provision for the aggregation of Ofgem’s actual tender costs and for the comparison of the aggregated figure against the total received in tender costs. Cost assessment costs incurred before aggregation are taken into account when the aggregation exercise is carried out.

42. The process which Ofgem would follow is this:

- As specified in clauses 6CA(5) and 6CA(7)(b), on aggregation, cost assessment costs incurred as tender costs before aggregation are compared with the payments received under clause 6CA(1)(a) before aggregation.

- Cost assessment costs incurred after aggregation—for which provision is made in clause 6CA(1)(b)—cannot be taken into account for the purposes of aggregation, because those costs have not yet been incurred and the amount of those costs is unknown at the time of the aggregation exercise. This is why clause 6CA(7)(b) does not refer to payments received under clause 6CA(1)(b).

43. The Government is grateful for the Committee’s questions about this section, and we are considering the drafting in light of them. It should be noted that in running offshore transmission tenders since 2009, Ofgem has not to date incurred any cost assessment costs after aggregation. Ofgem does not consider it likely that they will do so in future.

Recommendation 20: We ask the Government to explain why it proposes to remove Ofgem’s seven year limit on transmission and distribution code modifications by virtue of the draft legislation’s omitting section 6H(8) of the Electricity Act 1989.

44. Code modifications may be needed at any time after the Secretary of State has brought forward secondary regulations specifying the kind of assets which may be subject to competitive tender. It is Government’s intention to enable the Secretary of State to bring
forward those regulations at any time in order to deepen the use of competition to ensure that consumers benefit to the greatest extent. Therefore, Government believes that a time-limit on Ofgem’s ability to modify codes would limit their ability to reflect the Secretary of State’s decision on the kinds of asset suitable for competitive tender.

45. Code modifications would also be required to enable competition for distribution assets and onshore generator commissioning. Those provisions will not be immediately commenced; provision in relation to competition in distribution, for instance, will not be commenced during the current distribution price control period, which ends in 2023. Limiting Ofgem’s ability to make these code modifications to seven years after the draft legislation comes into force could result in expiry of the powers before Ofgem is in a position to exercise them, if required.